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IN THE

Supreme Court of the United States

ELEANOR MCCULLEN, JEAN BLACKBURN ZARRELLA, GREGORY SMITH, CARMEL FARRELL, AND ERIC CADIN,
Petitioners,

v.

MARTHA COAKLEY, ATTORNEY GENERAL FOR THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICAE CURIAE* DR. ALVEDA KING, MARLYNDA AUGELLI, SUSANNA BRENNAN, MOLLY WHITE, ESTHER RIPPLINGER AND MAGDALENA CASTRO IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICAE CURIAE*[1]

Amicae are women who attest to the importance of free speech in their abortion decisions.

Ms. Susanna Brennan had two abortions. She recalls the clinic staff in an "authoritative way, telling [her] in no way could [she] afford a baby," and presenting abortion as if "there was no other choice." She recalls that "[t]here was no other information given to [her] at all – nothing about getting financial and other assistance, what the actual act of abortion was, or what the after effects would do to [her]." She explains that her abortions contributed to her divorce, as well as battles with alcoholism, bulimia, and depression. She believes that "if someone had approached [her] outside of the clinic, [she] would be a proud parent today . . . ."

Ms. Molly White had two abortions. Before her first abortion, she "asked the clinic staff about . . . the risks of abortion," but was told here was no "risk of physical complications." She explains that her abortion caused continual bleeding, a damaged cervix, and uterine scarring, which led to two stillborn children and a miscarriage. She believes "[i]f someone had been outside the clinic offering

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[1] Counsel for both parties have consented to the filing of this *amicus* brief. Their written consents accompany this brief. Pursuant to S. Ct. Rule 37(a), counsel of record for all parties have received timely notice of the intention to file this brief. No counsel for a party authored this brief in whole or in part. The Pro-Life Legal Defense Fund, Inc. contributed the printing costs associated with the preparation and submission of this brief. Unless otherwise noted, all statements made by *amicae* are on file with counsel for *amicae curiae*.

help and information, [she] would have decided against abortion . . . the most regrettable decision of [her] life."

Ms. Esther Ripplinger had an abortion. She asked the clinic staff about the baby's stage of development, and was told "It's only a blob of tissue . . ." She later learned her baby actually had "hands, feet, and a beating heart." She was also told the procedure was "quick and painless" and would only cause "minor discomfort," but she later felt "excruciating pain." She suffered from depression and anxiety from the "worst decision she ever made . . ." She believes that "[i]f someone had given [her] information and alternatives as [she] walked into the clinic, [she] would not have made this choice."

Ms. Marlynda Augelli had an abortion. She was not given any "information on the development of the child," nor about the potential psychological side effects. She explains that her children after the abortion have "riddled [her] with guilt and remorse," since they are constant reminders that she "[threw] away" the life of her aborted child. She "wish[es] that [she] could have heard a counselor on the sidewalk before [she] walked into [her] doctor's office," because "[i]f [she] had heard of the risks beforehand, [she] could have made an educated decision" and not abort the child.

Dr. Alveda King, niece of Dr. Martin Luther King, Jr., had two abortions. She explains her abortions led to eating disorders, depression, nightmares, and sexual dysfunctions. Additionally, she struggles with guilt and anger, as well as an inability to bond with her other children. She "wish[es] that she had received more information

about abortion prior to [her] decision," because if she had seen a sonogram and known the increased risk of depression and cervical and breast cancer, "[she] never would have had an abortion."

Ms. Magdalena Castro came breathtakingly close to having an abortion. She recalls that even though she "didn't know anything about abortion," she "thought she had to [have one]," because the baby's father told her she could not afford a baby. When she arrived at the clinic, she met a sidewalk counselor who gave her information and a pamphlet about the abortion procedure, fetal development, and abortion alternatives. After receiving an ultrasound and seeing her baby's heartbeat, she "felt so happy" and decided to keep the baby. She explains that because the sidewalk counselor "gave [her] all the information about the abortion," she "did not make the mistake" that would have her made her "sad for the rest of [her] life." She believes "[i]t would be very, very sad if a person like me could not get this information."

SUMMARY OF ARGUMENT

This Court should grant certiorari in this case because the decision below, which upheld Mass. Gen. Laws ch. 266, § 120E, undermines the very essence of the First Amendment. This Court has held repeatedly that "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). Without a vibrant and functioning marketplace, society loses "the best test of truth,"

which is the "the power of [a] thought to get itself accepted in the competition of the market." *Abrams v. United States*, 250 U.S. 616, 630 (1919)(Holmes, J., dissenting). Based on a misunderstanding of this Court's precedent, the decision of the First Circuit below undermines the functioning of the marketplace of ideas by upholding a law that restricts both the ability of speakers to get their message across, and of willing listeners to access critical information. The First Circuit decision below is the most extreme decision in a line of lower court cases that have misinterpreted this Court's decision in *Hill v. Colorado*, 530 U.S. 703 (2000). Because these decisions pose a grave threat to the First Amendment, this Court should intervene and set clear limits on the reach of *Hill*.

REASONS FOR GRANTING CERTIORARI

I. THE DECISION BELOW IGNORES THE WELL-ESTABLISHED FIRST AMENDMENT RIGHT OF WOMEN, SUCH AS THE *AMICAE CURIAE*, TO RECEIVE INFORMATION ABOUT ABORTION.

By affirming the constitutionality of Mass. Gen. Laws ch. 266, § 120E, the First Circuit undermined the ability of Massachusetts women to make fully informed choices about abortion. The decision below, unprecedented in its breadth and scope, ignores important First Amendment principles laid down by this Court concerning the right to receive information. Because the rights at stake here are crucial to the purpose of the First Amendment, and because—as the stories of the *amicae* aptly demonstrate—the consequences of

their abridgement can be severe, this Court should grant certiorari and clarify the boundaries of this right.

"It is now well-established that the Constitution protects the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1976). The purpose of the First Amendment is to ensure that civil society develops a marketplace of ideas so that the truth may be found. *See Red Lion Broadcasting Co.*, 395 U.S. at 390 ("It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."). This creation of a true marketplace of ideas requires that the rights of both speakers and listeners be protected. Nowhere is a robust supply of information more important than in difficult and crucial decisions about abortion, and *amicae* are ample evidence of the profound effects that receipt of information can have on individual choices. This Court has long recognized the importance of women making educated decisions about abortion. *See, e.g., Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 67 (1976) ("The decision to abort, indeed, is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences."). Women have the right to receive information about abortion from counselors who have no economic interest in abortion, without interference from the state.

The strikingly broad decision of the First Circuit below ignored the burden Mass. Gen. Laws ch. 266, § 120E places on the rights of women

entering reproductive health centers. The Act prohibits a woman from having a conversation, receiving a leaflet, or engaging in any type of communication within a 35-foot fixed buffer zone. Unlike the previous version of the statute, which contained an exception for consensual communication, *see* Mass. Gen. Laws ch. 266, § 120E 1/2(B) (2000), the revised version of the statute prohibits all communication within the buffer zone. *See* Mass. Gen. Laws ch. 266, § 120E 1/2(B) (2007). The Act applies to invited and uninvited approaches alike, regardless of how peaceful and welcomed the speech is. If a woman entering a clinic affirmatively chooses to have any other type of communication with one of the appellants, appellant cannot enter the buffer zone to communicate. By restricting consensual speech, the First Circuit violated the right of women to receive information about abortion.

It is no answer to say that the women approaching an abortion clinic could walk outside the 35-foot radius created by the ordinance to talk to abortion counselors. Counselors attempting to communicate with women entering a reproductive health center are effectively prevented from peacefully initiating communications in a conversational tone. From 35 feet away, a conversational voice will be wholly drowned out by the loud background noise of city streets. If individuals like Petitioners are prohibited from attempting to approach to initiate a conversation, women like the *amicae* will likely never discover that there are people willing to have a calm and rational conservation with them about the consequences of abortion. Just as a speaker's First Amendment right entails a certain level of access to an audience, *see Kovacs v. Cooper*, 336 U.S. 77, 87 (1949)) ("[t]he right

of free speech is guaranteed every citizen that he may reach the minds of willing listeners and to do so there must be opportunity to win their attention"), so must a listener's right include some reasonably unfettered ability to know what information is available. A law that prevents a listener from knowing what information is available impermissibly burdens that listener's First Amendment rights. The Government has no interest in prohibiting willing listeners from communicating with speakers inside the buffer zone.

In *Hill v. Colorado*, this Court recognized that a buffer zone law without an exception for consensual speech would raise independent constitutional issues. In upholding an eight-foot floating buffer-zone law, this Court was careful to limit its reasoning only to cases where the statute at issue strikes "an acceptable balance between the constitutionally protected rights of law-abiding speakers and the interests of *unwilling* listeners" 530 U.S. at 714 (emphasis added). This Court repeatedly emphasized the significance of the act's exception for consensual speech: it is "important . . . to recognize the significant difference between state restrictions on a speaker's right to address a willing audience and those that protect listeners from unwanted communication." *Id.* at 715-16 (emphasis added). Despite *Hill's* repeated admonitions, the First Circuit failed to consider the burden the Massachusetts statute placed on the First Amendment right of willing listeners to receive information about abortion procedures.

Further, there is no other source of neutral information about abortion readily available to women who visit reproductive health facilities in

Massachusetts. Unlike some other states, *see, e.g.*, Ohio Rev. Code Ann. §§ 2317.56(B)–(C); 18 Pa. Cons. Stat. Ann. § 3208(a)(2); Ga. Code Ann. § 31-9A-4(a)(2) Massachusetts reproductive health centers are not required to provide information about the consequences of abortion. Moreover, given the pecuniary interest reproductive health-care clinics have in providing abortions, it is eminently sensible to maintain a healthy skepticism of the objectivity and forthrightness of clinic personnel in advising patients about the nature of the abortion procedure and its potential risks.[2] The *amicae*, like many

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[2] Indeed, such skepticism is validated by the recent tale of Abby Johnson. Johnson served as the director of a Planned Parenthood clinic in Bryan, Texas. After nine years with the organization, she renounced her pro-choice views and quit as director. An important factor to her change of heart was the organization's response to the economic pressures of the current recession. According to Johnson, her superiors encouraged her to increase revenues by performing more abortions, which are by far the most lucrative service the clinics provide. *See* Joseph Abrams, Planned Parenthood Director Quits After Watching Abortion on Ultrasound (Nov. 2, 2009), http://www.foxnews.com/story/0,2933,571215,00.html (last visited Nov. 21, 2009).

The immediate cause of Johnson's change of heart is also illustrative of the degree to which abortion clinics hide the gory details of the practice from patients and personnel alike. Although Johnson had worked for Planned Parenthood for nine years and risen to the rank of clinic director, she had never observed an ultrasound of an abortion. When she did, she was forever changed. In Johnson's words, "I could see the whole profile of the baby 13 weeks head to foot. I could see the whole side profile. I could see the probe. I could see the baby try to move away from the probe." Anne-Marie Dorning, Planned Parenthood Clinic Director Joins Anti-Abortion Group (Nov. 5, 2009), http://abcnews.go.com/Health/MindMoodNews/planned-parenthood-clinic-director-joins-anti-abortion-group/story?id=8999720 (last visited Nov. 21, 2009).

women contemplating an abortion, insist that they needed information and did not get it from clinic personnel,[3] and in others they were even provided with misleading information.[4] While the First Amendment does not require that states provide information about abortion to women, it does prohibit a state from preventing third parties from circulating such information. Because Massachusetts does not require the dissemination of this information and because reproductive healthcare facilities are not neutral sources of information, it is especially crucial that the government not impede third parties, such as Petitioners, from making this information available to women contemplating abortion.

The Court should address these issues because serious consequences result when women decide to terminate their pregnancies without full information. The right to receive information about

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[3] *See, e.g.*, Statement of Susanna Brennan ("There was no other information given to us at all – nothing about getting financial or other assistance, what the actual act of abortion was, or what the aftereffects would do to us."); Statement of Marlynda Augelli ("I did not receive . . . any information about the life of the child growing inside of me or any information about the risk of physical and psychological side effects.").

[4] *See, e.g.*, Statement of Molly White ("I specifically asked the abortion clinic staff about fetal development and the risks of abortion. . . . I later found out that these two answers were untrue. The abortion clinic workers withheld vital information when I asked for it. . . . I also needed information about abortion alternatives . . . ."); Statement of Esther Ripplinger ("I was not made aware of the many community services available for pregnant women. . . . I asked the [clinic employee] about the baby's stage of development [and was given false information].").

abortion should receive special protection because of "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 882 (1992) (plurality opinion). As Justice Kennedy observed in his dissent in *Hill*, there is "[n]o better illustration of the immediacy of speech, of the urgency of persuasion, of the preciousness of time," 530 U.S. at 792, than the abortion protestor seeking to inform a vulnerable and often distraught young woman of the true nature of, and alternatives to, the irrevocable decision she is about to make.

The stories of *amicae* demonstrate that women do, in fact, experience regret when they choose to abort a child without knowing all the facts. Several *amicae* attest they have suffered psychologically and, in some cases, physically, as a result of abortion decisions made with incomplete, misleading, or false information.[5] The experiences of the *amicae* are representative of the experiences of many women. Empirical research on the

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[5] *See, e.g.*, Statement of Susanna Brennan ("I became an alcoholic, bulimic, clinically depressed and suicidal."); Statement of Molly White ("I suffered from a damaged cervix and uterine scarring. . . . In addition to the physical pain, I had longer-lasting emotional pain. . . . This has taken a heavy psychological and emotional toll on my life and the life of my family."); Statement of Esther Ripplinger ("I realized that my annual increased depression was the anniversary of the abortion. . . . I also became overly protective of my young son and feared he might die."); Statement of Marlynda Augelli ("I began to grieve the death of my first little one . . . . I was riddled with guilt and remorse and there was nothing I could do to stop those feelings . . . . ").

psychological effects of abortion suggests that a woman who has undergone an abortion may face a number of difficulties. There is a direct correlation between a woman's history of abortion and her risk of depression, suicide, drug dependence, and poor mental health. *See* David M. Fergusson et al., *Abortion in Young Women and Subsequent Mental Health,* 47 JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY 16 (2006). A number of other studies have also found correlations between abortion and negative psychological outcomes.[6]

The stories of the *amicae* demonstrate that these consequences can, in some cases, be prevented if the state merely steps out of the way and allows the kind of rational moral discussion protected by the First Amendment to occur. Several *amicae* assert that they would not have chosen to have an

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[6] *See, e.g.*, Jesse R. Cougle et al., *Generalized Anxiety Following Unintended Pregnancies Resolved Through Childbirth and Abortion: A Cohort Study of the 1995 National Survey of Family Growth*, 19 JOURNAL OF ANXIETY DISORDERS 137 (2005) (anxiety); David C. Reardon et al., *Substance Use Associated with Unintended Pregnancy Outcomes in the National Longitudinal Survey of Youth*, 30 AMERICAN JOURNAL OF DRUG AND ALCOHOL ABUSE 369 (2004) (drug abuse); Jesse R. Cougle et al., *Depression Associated with Abortion and Childbirth: A Long-Term Analysis of the NLSY Cohort*, 9 MEDICAL SCIENCE MONITOR CR105 (2003) (depression); David C. Reardon et al., *Psychiatric Admissions of Low-Income Women Following Abortion and Childbirth*, 168 CANADIAN MEDICAL ASSOCIATION JOURNAL 1253 (2003) (inpatient psychiatric admissions); Mika Gissler et al., *Suicides After Pregnancy in Finland, 1987-94: Register Linkage Study*, 313 BRITISH MEDICAL JOURNAL 1431 (1996) (suicide).

abortion had they received accurate information.[7] *Amica* Magdalena Castro attests that the information she received from a counselor convinced her to carry her pregnancy to term rather than abort. The influence of the counselor's words was so strong that Castro asked the woman to be her child's godmother. *Amicae*'s stories illustrate the impact free speech can have on a woman's decision-making process. Information about abortion can have a life-altering effect, and the government should not deny a woman the opportunity to receive it.

II. THE ACT UPHELD BY THE FIRST CIRCUIT VIOLATES THE FIRST AMENDMENT BY LEAVING ABORTION COUNSELORS WITHOUT AN ADEQUATE CHANNEL TO COMMUNICATE THEIR MESSAGES.

The decision of the First Circuit below also puts an impermissible burden on the First Amendment rights of would-be sidewalk counselors

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[7] *See, e.g.*, Statement of Molly White ("If sidewalk counselors had been there to give me an independent source of information, I would not have made the two most regrettable decisions of my life."); Statement of Marlynda Augelli ("I did not receive . . . any information . . . about the risk of physical and psychological side effects. . . . If I had heard the risks beforehand, I could have made an educated decision and I would not have aborted my child."); Statement of Esther Ripplinger ("If someone had given me information and alternatives as I walked into the clinic, I would not have made this choice and paid this price."); Statement of Susanna Brennan ("I absolutely wish someone could have told me the truth and helped me. . . . I believe that if someone had approached us outside of the clinic, I would be a proud parent today . . . .").

and all individuals, including *amicae curiae* and Petitioners, who wish to speak peacefully to women visiting reproductive health clinics. Even if the First Circuit is correct that Mass. Gen. Laws ch. 266, § 120E is a time-place-manner restriction, the Act clearly fails to leave open alternative channels of communication as required by *Ward v. Rock Against Racism*, 491 U.S. 781, 802 (1989). In upholding the Act, the First Circuit assures us that the Act does nothing to prevent those standing 35 feet away from "speak[ing], gesticulat[ing], wear[ing] screen-printed T-shirts, display[ing] signs, [or] us[ing] loud speakers," *McCullen v. Coakley*, 571 F.3d 167, 180 (1st Cir. 2009) thus excising from the First Amendment the right to engage in rational discourse and preserving only a vulgar right to shout at distant passers-by. Most abortion counselors are not interested in shouting slogans in the vicinity of an abortion clinic; they instead aim to discuss the perils of abortion with those contemplating the decision to have one. Some ideas cannot be shared through simplistic T-shirt slogans or shouted over bullhorns.

Likewise, the First Circuit's insistence that "there is no constitutional guarantee of any particular form or mode of expression" is beside the point. *Id.* The Act does not merely forbid a certain medium of communication, such as picketing, but effectively prevents all communication on the complex and sensitive topic of the choice to have an abortion. Those seeking to communicate the type of information that *amicae* regretfully lacked are left with no way of doing so. The consequences of being prevented from communicating this type of information are immediate and irreversible; there is no second-best result and there are no second chances. *See*, *Hill*, 530 U.S. at 792 (Kennedy, J.,

dissenting) ("Here the citizens who claim First Amendment protection seek it for speech which, if it is to be effective, must take place at the very time and place a grievous moral wrong, in their view, is about to occur."). The question, ultimately, is whether the First Amendment protects merely the right to cheer for one's own team or whether it protects the right to persuade through the free exchange of ideas. We respectfully ask this Court to grant certiorari and re-affirm the latter protection.

Finally, by preventing all speakers from even entering the buffer zone, the Act forecloses all types of free speech in a fixed area and therefore "burden[s] substantially more speech than is necessary to further the government's legitimate interest[]" in promoting public health and safety. *Hill*, 530 U.S. at 799. Indeed, because of the size of the buffer zone and the Act's lack of an exception for welcomed communications, speakers are foreclosed from even silently offering written information or peacefully inviting others to talk. Moreover, this intrusion is not necessary to achieving any statutory goal. It is clear that the First Circuit has effectively eliminated the narrow tailoring requirement by impermissibly expanding the meaning of this Court's statement in *Hill* that a restriction "may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal." *Id.* The decision below displays its disregard for the narrow tailoring requirement by never even addressing how a rule excluding all speakers, even those silently distributing leaflets, from a fixed zone is remotely related to the governmental interest in public safety. Why does a complete ban on peaceful conversation and silent distribution of information fail to burden

"substantially more speech than is necessary"? We are not told.

III. THE FIRST CIRCUIT'S DECISION IS THE MOST FAR-REACHING IN A SERIES OF LOWER COURT RULINGS THAT MISUNDERSTAND THIS COURT'S DECISION IN *HILL V. COLORADO* AND ERODE FIRST AMENDMENT PROTECTIONS.

The First Circuit's decision below is based on a misunderstanding of this Court's content-neutrality analysis in *Hill*. In finding the Colorado statute in *Hill* to be viewpoint- and content-neutral, this Court was careful to limit its content-neutrality and viewpoint-neutrality determinations to the specific facts of that case. Necessary to its conclusion was the fact that the statute only minimally burdened the delivery of the Petitioners' message. Had the statute imposed a significantly larger bubble—with the result that one viewpoint was effectively silenced—the Court would have likely reached a different conclusion.[8] Moreover, despite its narrow reach, the Court's holding that the statute was both viewpoint and content neutral provoked two spirited dissents.

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[8] This supposition is especially probable given the reasoning of the four-Justice concurrence: "[T]he reason for [the statute's] restriction on approaches goes to approaches, not to the content of the speech ... the content of the message will survive on any sign readable at eight feet and in any statement audible from that slight distance. Hence, the implausibility of any claim that an anti-abortion message, not the behavior of the protestors, is what is being singled out." *Hill*, 530 U.S. at 738 (Souter, J., concurring).

Like the First Circuit below, lower courts have routinely misread *Hill* as exempting virtually all buffer zones from the strictures of viewpoint-discrimination and content-neutrality scrutiny. *See, e.g.*, *Brown v. City of Pittsburgh, 2009 WL 3489838* *7–*8 (3d Cir. Oct. 30, 2009) (relying on the gloss the First Circuit placed on *Hill* in *McGuire I*, 260 F. 3d 36, and the decision below, to find a 15-foot fixed buffer zone viewpoint- and content-neutral on its face); *Halfpap v. City of West Palm Beach*, 2006 WL 5700261, at *21–*22 (S.D. Fla. Apr. 12, 2006) (unpublished) (concluding that *Hill* required finding a 20-foot fixed buffer zone to be content-neutral, but adding that "[w]ere I writing on a blank slate . . . I would have viewed the Ordinance as content-based [because its] passage . . . was in response to speech-related activities occurring at a single abortion clinic . . . and was designed to restrict the protest, education or counseling by those who gather in the public spaces adjacent to the clinic in opposition to abortion."); *Hoye v. City of Oakland*, 642 F. Supp. 2d 1029, 1034-36 (N.D. Cal. 2009) (relying on *Hill* to uphold a floating buffer zone that applied only to abortion clinics as viewpoint-neutral).

These decisions pose a grave threat to the First Amendment. As this Court has recognized for more than a half century, "[t]he right of free speech is guaranteed every citizen that he may reach the minds of willing listeners and to do so there must be opportunity to win their attention." *Kovacs*, 336 U.S. at 87. Yet nearly a decade of lower court precedent, based on a deeply flawed reading of *Hill*, deprives one particular group of speakers, with one particular message, of that fundamental right. Forced ever further from their intended audience by ever expanding buffer zones, pro-life educators and

counselors, however peaceful, civil and compassionate, are becoming increasingly precluded from delivering their message. These buffer zone laws make off-limits to these speakers the only plot of land on the surface of the planet where their message has any plausible likelihood of achieving its desired effect.

Such buffer zone laws as upheld by the court below, moreover, are particularly offensive to First Amendment values because they silence only one side in perhaps the profoundest and most deeply emotional political and moral debate of our day. Pro-choice advocates will be generally indifferent to a buffer zone surrounding abortion clinics. They do not need to stand in front of clinics to inform pregnant women of the precise scope of their abortion rights or to answer questions about the procedure itself, the safety precautions taken, or its potential aftereffects. Such information is readily available on the other side of the clinic's doors. But pro-life advocates have ample cause to worry that, if they are unable to deliver their message outside the clinic, prospective clients, like many of the *amicae*, are unlikely to receive detailed information about the stage of development of their unborn babies, the details of the abortion procedure, or the risks of long-lasting emotional, psychological and even physical harm.[9]

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[9] According to the Planned Parenthood website, "Most women ultimately feel relief after an abortion . . . Serious, long-term emotional problems after abortion are about as uncommon as they are after giving birth." Planned Parenthood, In-Clinic Abortion Procedures, http://www.plannedparenthood.org/health-topics/abortion/in-clinic-abortion-procedures-4359.htm (last visited Nov. 21, 2009). Empirical research, however, raises serious doubts about the factual

Because lower courts have consistently adopted an overbroad reading of *Hill*'s viewpoint-neutrality reasoning, this Court should articulate clear limits on *Hill*'s holding. Specifically, this Court should clarify that *Hill* held the Colorado statute at issue to be viewpoint- and content-neutral only because its restrictions did not significantly burden speech of any viewpoint or subject matter in front of abortion clinics. The Massachusetts statute upheld by the court below, by contrast, should be declared viewpoint discriminatory on its face. The Massachusetts legislature specifically targeted only the public property surrounding abortion clinics—where sidewalk counselors have long offered information and support to pregnant women considering abortions—and created such vast no-speech zones that these pro-life counselors are for all practical purposes entirely precluded from delivering their message to their intended audience. Such an expansive speech restriction, applied only to a public forum where one particular viewpoint on one particular issue has traditionally been advocated, is far outside the bounds of *Hill*'s viewpoint-neutrality test and should accordingly be invalidated. If, however, such a restriction is consistent with *Hill*, the Court should consider overturning that case.

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accuracy of such a statement. *See, e.g.*, David M. Fergusson, et al., *Abortion in Young Women and Subsequent Mental Health*, 47 JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY 16 (2006) (finding a direct correlation between a woman's history of abortion and her risk of depression, suicide, drug dependence, and poor mental health). The testimony of the *amicae* also tends to negate Planned Parenthood's position.

CONCLUSION

For the foregoing reasons, *Amicae* respectfully request that this Court grant the writ of certiorari.

Respectfully submitted,

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